IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3488 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C J CHACKO, SENIOR ACCOUNTANT

Versus

DIRECTOR OF TECHNICAL EDU.

Appearance:

MR BP TANNA for the Petitioner.

Ms.Gajjar, Assistant GOVERNMENT PLEADER,

for Respondents No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/12/2001

ORAL JUDGEMENT

By filing this petition, the petitioner has prayed for necessary writ in the nature of mandamus, directing the respondents to release the amount of increments withheld from 1.12.1983. The petitioner had also prayed for interim relief to the effect that during

the pendency of this petition, the respondents may be restrained from deducting the amount of increments which are due from year to year. It is the case of the petitioner that he is serving in the Department since last 28 years. It is further his case that at the time of his appointment, no condition was prescribed in his appointment order regarding passing of any examination in regional or colloquial language. In the year 1970, the Government framed Rules, by which a Government servant was supposed to pass Gujarati Language examination. The Rules are known as "Gujarat Government Servants (Lower Standard & Higher Standard Gujarati Language Examination) Rules, 1970". The said Rule came into force on 27.8.1970. Initially, the petitioner has challenged the constitutional validity of the aforesaid rule. The Division Bench, at the time of admitting the matter, had passed the following order on 8.7.1988 :-

> " ... ...
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> Rule. Mr.Dave appears on behalf of respondents Nos. 1 and 2. There will be interim relief as prayed for in paragraph 26(E) on condition that (i) petitioner shall appear at every Gujarati language examination held during the pendency of this litigation; (ii) that the petitioner will restore the amount of increments in salary within three months from the order of the High Court in case the petitioner fails in this petition; and (iii) that the petitioner shall file an undertaking in this connection within one week from today.
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> ... ..."

However, subsequently, in view of the decision of this Court in Special Civil Application No.3430 of 1986, dated 6.9.2000, such type of matters are required to be placed before the single Judge for disposal and the Office has placed this matter before the single Judge for disposing of the same.

Today, at the time of hearing of this petition, it was argued by Mr.Kerial, learned Advocate, that the petitioner had already passed the Gujarati language examination and, therefore, now, even otherwise, he is entitled to get his increments released regularly. He further submitted that since he has passed the examination, there is no question of paying back any amount as per the order dated 8.7.1988. Considering the

facts and circumstances of the case, as well as considering the fact that at the time of appointment, no such condition was prescribed in the appointment order of the petitioner regarding passing of regional language examination and coupled with the fact that by an interim order, this Court had directed the respondents to continue the benefits of increments in favour of the petitioner and now, since the petitioner has already passed Gujarati language examination, which is required by the Rules, the respondents should be restrained from withholding the increments. Since the petitioner has already passed the examination, the question about giving exemption on completion of 45 years of age is also not required to be considered. Similarly, challenge to the validity of the Rules is also not required to be examined, as the petitioner has passed the examination.

In view of the aforesaid and considering the fact that the petitioner has passed the examination, this petition is allowed. The respondents are directed not to withhold any amount of increment of the petitioner on the ground of non-passing of Gujarati Language examination. Learned AGP, however, states that she is not aware whether the petitioner has passed the examination or not. If the statement made by the learned counsel for the petitioner is found to be incorrect, it would be open for the parties to move this Court for revoking or modifying this order. The petition is allowed considering the statement made by Mr.Kerial, learned counsel, that the petitioner has already passed Gujarati language examination.

The petition is accordingly allowed to the aforesaid extent. Rule is made absolute with no order as to costs.

20th December, 2001 (P.B. Majmudar, J.)

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(apj)